

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**IN RE NAMENDA DIRECT PURCHASER  
ANTITRUST LITIGATION**

**Civil Action  
No. 1:15-07488-CM**

**STIPULATION**

WHEREAS, defendants Actavis plc, Forest Laboratories, LLC, Merz GmbH & Co. KGaA, Merz Pharma GmbH & Co. KGaA, and Merz Pharmaceuticals GmbH (“Defendants”) have requested that Direct Purchaser Plaintiffs (“Plaintiffs”) dismiss their claims against defendants Merz GmbH & Co. KGaA, Merz Pharma GmbH & Co. KGaA, and Merz Pharmaceuticals GmbH (“Merz”);

WHEREAS, Defendants have now produced copies of the agreements that are the subject of Counts 3, 4, and 5 of the First Amended Class Action Complaint, dated October 14, 2015 (the “Complaint”);

WHEREAS, Forest Laboratories, Inc. and Forest Laboratories Holdings Ltd., entities not currently named as defendants in the Complaint, were signatories to those agreements, and Plaintiffs therefore wish to add Forest Laboratories, Inc. and Forest Laboratories Holdings Ltd. as defendants in this action;

WHEREAS, the Parties have agreed that Plaintiffs may add Forest Laboratories, Inc. and Forest Laboratories Holdings Ltd. if Merz GmbH & Co. KGaA, Merz Pharma GmbH & Co. KGaA, and Merz Pharmaceuticals GmbH are dismissed from the case;

NOW, THEREFORE, it is hereby stipulated by and between the undersigned parties through their respective counsel, as follows:

- 1) The Complaint is hereby deemed amended to name Forest Laboratories, Inc. and Forest Laboratories Holdings Ltd. as defendants to Counts 3, 4, and 5 of the Complaint;

- a) The undersigned counsel for Defendants represent Forest Laboratories, Inc. and Forest Laboratories Holdings Ltd., and hereby accept service on behalf of Forest Laboratories, Inc. and Forest Laboratories Holdings Ltd. (collectively with Actavis plc and Forest Laboratories, LLC “Forest”);
- b) All orders and opinions previously entered in this action shall apply to Forest Laboratories, Inc. and Forest Laboratories Holdings Ltd.;
- c) Forest Laboratories, Inc. and Forest Laboratories Holdings Ltd. are deemed to have joined Forest Defendants’ Answer to the Complaint, Dkt. No. 107 (Sept. 27, 2016).

2) Merz GmbH & Co. KGaA, Merz Pharma GmbH & Co. KGaA, and Merz Pharmaceuticals GmbH are hereby dismissed as defendants to this action subject to the following terms:

- a) To the extent not produced by Forest, Merz will produce all (i) written discovery, (ii) briefs, (iii) expert reports, and (iv) documents produced by Merz in *Forest Laboratories, Inc. v. Cobalt Laboratories Inc. et al.*, Civil Action No. 08-cv-0021 (D. Del.); *Forest Laboratories, Inc. v. Barr Laboratories, Inc. et al.*, Civil Action 08-cv-0022 (D. Del.); *Forest Laboratories, Inc. v. Dr. Reddy’s Laboratories et al.*, Civil Action No. 08-cv-0052 (D. Del.); *Forest Laboratories, Inc. v. Orgenus Pharma, Inc.*, Civil Action No. 08-cv-0291 (D. Del.); *Forest Laboratories, Inc. v. Apotex, Inc. et al.*, Civil Action No. 08-cv-0336 (D. Del.); and *Forest Laboratories, Inc. v. Orgenus Pharma, Inc.*, Civil Action No. 09-cv-5105 (D.N.J.) (“Namenda IR Patent Litigations”);
- b) Forest will not rely upon the absence of Merz as a named defendant for any purpose, including (but not limited to): (i) asserting that Merz is a necessary party to, or that Merz, rather than Forest, is the party liable for, any of the claims, counts, or theories in the Complaint; or (ii) advancing a defense that relies in whole or in part upon the absence of

Merz as a named defendant;

- c) Merz will not unreasonably withhold its assent to enter into a stipulation, to the extent that one is required in connection with any summary judgment motions or trial of this action, that documents authored by Merz or its agents qualify as business records under Federal Rules of Evidence 803(6), are authentic, and qualify as original documents pursuant to Federal Rule of Evidence 1002. Forest agrees to be bound by any such stipulation establishing a document as a business record, as authentic, and/or as an original document, but reserves the right to object to the extent a document contains hearsay within hearsay.
- d) Merz will agree to present a corporate representative for deposition of seven hours of testimony in the United States within the fact discovery period on topics to be identified in a subpoena for which White & Case LLP agrees to accept service;
- e) Plaintiffs agree that they will identify topics for the Merz deposition in good faith and seek to avoid duplicative testimony that can be more readily obtained from Forest;
- f) Plaintiffs agree that Merz will retain all rights to object to the deposition subpoena topics under any grounds available in the Federal Rules of Civil Procedure, the Federal Rules of Evidence, or other legal bases;
- g) Plaintiffs agree that, other than the single corporate representative deposition (pursuant to paragraph 2(d)-(f)), Plaintiffs will issue no other discovery (for documents, depositions, interrogatory responses, requests for admissions, or other means of discovery) against Merz or any of its affiliates. However, should Forest make any argument that Plaintiffs cannot recover in this case that Plaintiffs reasonably believe implicates discovery from Merz (for instance, that Plaintiffs cannot recover in this case based on a Merz patent other

than U.S. Patent No. 5,061,703), then Plaintiffs may request leave of Court to issue a subpoena to Merz and/or any of its affiliates. Should the Court grant leave to subpoena Merz and/or any of its affiliates, White & Case agrees to accept service of such a subpoena;

- h) Plaintiffs agree that DPPs' Consolidated Amended First Requests for Production of Documents, dated December 29, 2016, are withdrawn as to Merz;
- i) Merz and Forest will not object to an amendment to the Complaint to re-add Merz as a defendant if, at any time, the Court determines that Forest or Merz has violated the terms of this stipulation;
- j) Forest Laboratories, LLC, Actavis plc, and their counsel warrant that they have authority to enter into this stipulation on behalf of Forest Laboratories, Inc. and Forest Laboratories Holdings Ltd.

SO ORDERED.

Dated: April 20, 2017



The Honorable Colleen McMahon  
United States District Judge

Dated: April 19, 2017

**Actavis plc and Forest Laboratories, LLC**

*/s/ Heather K. McDevitt*

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**Merz GmbH & Co. KGaA, Merz Pharma  
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Respectfully submitted,

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**JM Smith Corporation d/b/a Smith Drug  
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